

**WAGANAKISING ODAWAK STATUTE # 2021-\_\_\_\_\_**  
**DOMESTIC VIOLENCE**

**SECTION I. SHORT TITLE**

This statute may be cited as the “Domestic Violence Statute.”

**SECTION II. PURPOSE**

The Little Traverse Bay Bands of Odawa Indians (LTBB) Waganakising Odawak Statute, Domestic Violence is construed to promote the following:

This Statute addresses domestic violence that involves persons of the same household, family members or persons in an intimate or in a dating relationship. It is the expectation that the criminal justice system responds to victims of domestic violence with fairness, respect, compassion, and in a prompt and effective manner. Repeals and replaces any previous Statute including WOS 2020-013, WOS 2015-018 Domestic Violence Statute, WOS 2006-014, Domestic Violence Protection.

**SECTION III. DEFINITIONS**

- A. **“Clerk”** means the clerk of the Tribal Court.
  
- B. **“Family member and Household member”** means any adult or minor child(ren) who reside in the household or who are persons related by blood, adoption or marriage.
  
- C. **“Indian”** means a person who is a member of a federally recognized Indian Tribe.
  
- D. **“Indian Tribe”** means any federally recognized Indian Tribe.
  
- E. **“LTBB or Tribe”** means the Little Traverse Bay Bands of Odawa Indians.

**F.** “**Minor**” means a person less than eighteen (18) years of age, who has not been emancipated.

**G.** “**Non-Indian**” means any person who is not a member of a federally recognized Indian Tribe.

**H.** “**Perpetrator**” means the person who allegedly committed an act of domestic violence.

**I.** “**Protection Order**” means:

**1.** Any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; including

**2.** Any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendente lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

**J.** “**Spouse, Dating or Intimate Relationship**” means a spouse or former spouse of the victim, a person who shares a child in common with the victim, and a person who cohabitates or has cohabitated as a spouse with the victim or a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**K.** Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians means “*areas referred to in Public Law 103-324, 25 U.S.C. Section 1300k-2(b)(2)(A), as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat. 621*”, including all land which is held in trust by the United States government for the benefit of the Tribe or an individual member of the Tribe and/or as otherwise described by applicable federal law or court opinion.

- L. “Tribal Citizen”** means a person who is an enrolled member of the Little Traverse Bay Bands of Odawa Indians.
- M. “Tribal Court”** means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- N. “Tribal Police or Law Enforcement”** means any law enforcement officer of the Little Traverse Bay Bands of Odawa Indians Police Department.
- O. “Tribal Prosecutor or Prosecutor”** means the prosecutor for the Little Traverse Bay Bands of Odawa Indians, assistant prosecutor(s) and Special Prosecutor.
- P. “Tribal Judge or Judge”** means a judge for the Little Traverse Bay Bands of Odawa Indians.
- Q. “Victim”** means a person who has suffered actual physical or mental harm, as a result of domestic violence or is the protected party under a Personal Protection Order.

**SECTION IV. JURISDICTION**

- A. General Criminal Jurisdiction.** In domestic violence cases, the general criminal jurisdiction of the Tribe extends to LTBB citizens and all other Indians.
- B. Special Domestic Violence Criminal Jurisdiction.** Based on the Tribe’s inherent sovereignty and jurisdiction and the Violence Against Women Reauthorization Act of 2013, 25 USC 1304, the Tribe exercises special domestic violence criminal jurisdiction over all persons whom LTBB does not have jurisdiction over pursuant to section A for crimes of domestic violence as defined in Section VII occurring within the territorial jurisdiction of LTBB.
  - 1.** The following are the only exceptions to LTBB’s special domestic violence criminal jurisdiction:
    - a.** Neither the victim nor the defendant is an Indian.
    - b.** Defendant lacks ties to LTBB. The defendant lacks ties to LTBB when the defendant:
      - i.** Does not reside in the territorial jurisdiction of LTBB; or

- ii. Is not employed within the territorial jurisdiction of LTBB; or
- iii. Is not a spouse, intimate partner, or dating partner of an LTBB citizen; or an Indian who resides in the territorial jurisdiction of LTBB.

2. The burden of proving an exception to LTBB’s jurisdiction is upon the defendant and must be raised as an affirmative legal defense in a pre-trial motion in accordance with Court Rule 1.318(B). The Court shall decide whether the exception to jurisdiction has been proven as a matter of law, prior to trial. If there is evidence weighing both in favor and against the exception, and the Court deems it a matter of factual dispute rather than law, it may allow the jury to decide the question at trial.

C. The Tribal Court has full jurisdiction and authority to issue and enforce protection orders against all persons regarding matters arising within the territorial jurisdiction of LTBB, or otherwise within the authority of LTBB.

## **SECTION V. DUE PROCESS GUARANTEES**

A. Rights of the Accused In all domestic violence criminal prosecutions, the accused shall have the following rights:

1. The right to be secure in their persons houses, papers, and effects against unreasonable search and seizures, or issue warrants, unless based upon probable cause, and supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
2. The right to be free from being put twice in jeopardy for the same offense;
3. To not be compelled to be a witness against him/herself;
4. To a speedy and public trial;
5. To be informed of the nature and cause of the accusation and be confronted with the witnesses against him/her;
6. To have compulsory process for obtaining witnesses in his/her favor;

7. To have the assistance of counsel for his/her defense, and to have all these rights explained at the time of their arraignment;
8. To be free from excessive bail, excessive fines or the infliction of cruel and unusual punishments;
9. To not be denied equal protection of the law or to have their liberty or property removed without due process of law;
10. To not be subject to any bill of attainder or ex post facto law;
11. The right to have a jury trial of not less than six (6) persons;
12. To be notified of the right to file a writ of habeas corpus and to request a stay of detention in federal court upon an order of detention”;
13. To have the LTBB’s criminal laws, rules of evidence and rules of criminal procedure publicly available prior to charging the defendant;
14. To have the right of counsel, and court appointed counsel if they cannot afford one. All attorneys appearing before the court must be licensed to practice law by the state or federal bar, and be a member in good standing. By December 1 of each year, the Chief Judge shall submit to Tribal Council an annual report on the average cost of defending offenses under this Statute. The Judiciary may adopt a court rule that modifies the appointment of court-appointed attorneys based on standards for Indigent defendants. A court appointed attorney may petition the court to withdraw as attorney of record and the court may grant the petition whenever private counsel has been retained on the defendant’s behalf.

**B. Courts of Record.**

1. Tribal Courts are the Courts of Record and the Clerk must certify under seal as to the accuracy and validity of the files and records of all proceedings before the LTBB Courts.

2. The Clerk shall take, preserve and certify under seal to the accuracy of a verbatim record of the proceedings before the Courts. The record may be created and recorded by a stenographic, electronic, mechanical, or other recording devices approved by the Chief Judge of the Court as a trustworthy means of creating a permanent verbatim record of all proceedings.
3. The Chief Judge shall proscribe the length of time verbatim transcripts must be preserved by the Clerk, unless otherwise addressed by Statute.
4. It is a criminal offense, punishable by penalties and under the laws of LTBB for the Clerk of the Tribal Courts to knowingly make or keep a false file, record or certificate or to alter, amend or destroy any file, record or transcript without lawful authority.

## **SECTION VI. JUDGE AND JURY REQUIREMENTS**

**A. Tribal Court Judges.** All judges presiding over cases in which domestic violence criminal jurisdiction is asserted, must be admitted to practice before the Supreme Court of the United States, or any United States Circuit Court of Appeals, or the Supreme Court of any state; and have sufficient legal training to preside over criminal trials.

**B. Formation of Jury.** Where the defendant is charged with a crime under this statute, the defendant has a right to be tried by a jury selected from a jury pool that represents a fair cross-section of the community, and in cases under Section VII. B (Special Domestic Violence Criminal Jurisdiction, SDVCJ), that includes non-Indians.

1. **Juror Qualifications.** The basic qualifications of a juror are any person:
  - a. Who is at least 18 years of age;
  - b. Who is not under any legal disability;
  - c. Who has not been convicted of a felony in any jurisdiction in the last ten years or convicted of a crime of domestic violence;

d. Who is a LTBB Citizen or a citizen of another federally recognized Tribe living within the territorial jurisdiction of LTBB; and

e. In SDVCJ cases, who is a LTBB citizen or a citizen of another federally recognized tribe living within the territorial jurisdiction of LTBB, employed by LTBB or any of its entities, or who lives in tribal housing.

2. Jury Selection Process. In SDVCJ cases, LTBB ensures that jury pools represent a fair cross-section of the community, and include non-Indians that live on trust land, are employed by LTBB, or any of its entities.

C. **Civil Jurisdiction.** The Tribal Court has full jurisdiction and authority for the purposes of carrying out the Jury Selection Process to exercise civil jurisdiction over any person(s) who lives or works within the territorial jurisdiction of LTBB.

D. **Imprisonment.** Any defendant sentenced to greater than one-year imprisonment, must serve the sentence in a federal or state facility; or a tribal facility that is approved by the Bureau of Indian Affairs.

## SECTION VII. CRIMES OF DOMESTIC VIOLENCE

A. **Dating Violence.** This crime occurs when violence is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

B. **Domestic Violence.** This crime occurs when violence is committed by a current or former spouse, or intimate partner, of the victim; by a person with whom the intimate partner of the victim shares a child in common; by a person who is cohabitating with, or has cohabitated with the victim as a spouse or intimate partner; or by a person similarly situated to a spouse of the victim under the domestic violence laws of LTBB when the violence occurs within the territorial jurisdiction of LTBB.

**C. Definition of Violence.** Violence is defined as the act of causing actual physical or mental harm, or causing the fear of imminent physical or mental harm, or engaging in a course of conduct that causes a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or controlled.

**D. Other Acts Admissibility.**

1. In a criminal action under this section, in which the defendant is accused of an offense involving domestic or dating violence, evidence of the defendant's commission of other acts of domestic or dating violence is admissible for any purpose for which it is relevant, including propensity, if it is not otherwise excluded.

2. If the prosecutor intends to offer evidence under this section, they shall disclose the evidence, including any existing statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than 10 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown.

**E. Hearsay Admissibility**

1. Evidence of a statement by an alleged domestic or dating violence victim is admissible if all of the following apply:

- a. The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.
- b. The action in which the evidence is offered under this section is an offense involving domestic or dating violence.
- c. The statement was made under circumstances that would indicate the statement's trustworthiness.
- d. The statement was made to a law enforcement officer.
- e. The statement was made at, or near, the time the conduct alleged in the statement occurred.

2. For purposes of this subsection, circumstances relevant to the issue of trustworthiness include, but are not limited to all of the following:

- a. Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.
- b. Whether the declarant has a bias or motive for fabricating the statement, and the extent of any bias or motive.
- c. Whether the statement is corroborated by evidence other than statements that are admissible only under this section.

3. If the prosecutor intends to offer evidence under this section, they shall disclose the evidence, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than 10 days before the scheduled date of trial or at a later time as allowed by the Court for good cause shown.

4. Nothing in this section shall be construed to abrogate any privilege conferred by law.

**F. Violation of Protection Order.** This crime occurs when the defendant acts within the territorial jurisdiction of LTBB and violates the portion of a protection order that:

1. Prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
2. Was issued against the defendant;
3. Is enforceable by the participating tribe; and
4. Is consistent with 18 U.S.C. § 2265(b). Full faith and credit given to protection orders.

## **SECTION VIII. PENALTIES**

**A.** A defendant who is found guilty of a crime under this statute is subject to incarceration for up to one (1) year, a fine of up to \$5,000.00, and any appropriate rehabilitative or

probationary terms, unless aggravating circumstances exist and the Tribal Law and Order Act (TLOA) has been enacted by the Tribe.

**B. Aggravating Circumstances** – A defendant who is found guilty of a crime under this statute, where aggravating circumstances were present is subject to imprisonment for up to two years, a fine of up to \$10,000.00, and any appropriate rehabilitative or probationary terms, if the Tribe has enacted TLOA. “Aggravating circumstances” include circumstances where:

1. The defendant has a prior conviction for any crime involving domestic or dating violence in any court; or
2. The defendant knew that the victim was vulnerable or incapable of resistance; or
3. The victim was pregnant and the defendant knew of the pregnancy; or
4. The defendant was under the influence of controlled substances or alcohol; or
5. The attack took place in the presence of minor children.

**C. Serious Aggravating Circumstances** - A defendant who is found guilty of a crime under this Statute, and who has two (2) or more prior convictions for crimes involving domestic or dating violence in any jurisdiction, or who uses a dangerous weapon to commit the offense, or who causes serious bodily injury as a result of the offense is subject to incarceration for up to three (3) years, a fine of up to \$15,000.00, and any appropriate rehabilitative or probationary terms, if the Tribe has enacted TLOA.

**D.** “Dangerous weapon” means any object which can inflict serious bodily harm on a victim.

**E.** “Serious bodily harm” means any bodily injury resulting in the need for medical treatment, whether or not such treatment was sought, or which seriously harms or impairs the normal health or functioning of the body

**F.** Forfeiture of Weapons. The Court may order forfeiture of any firearms and ammunition upon a conviction under this section.

## SECTION IX.

## RESPONSIBILITIES OF TRIBAL POLICE

**A. To Victims.** A law enforcement officer responding to a domestic violence situation must use all reasonable means to protect the victim and minor children to prevent further violence.

This may include, but is not limited to, the following:

1. Taking any necessary action to provide for the safety of the victim and household members;
2. Confiscating any weapons involved;
3. Assisting victims in obtaining medical treatment;
4. Assisting victims in removing essential personal effects;
5. Transporting the victims and any minor children to a shelter or other safe place;
6. Giving the victims immediate notice of rights, remedies, and services available;  
and
7. Notifying the appropriate agency or agencies that can provide assistance.

**B. To Child(ren) Present.** A law enforcement officer who responds to a domestic violence situation where minor child(ren) are present must use all reasonable means to protect the minor child(ren) and prevent further acts of violence in their presence. This includes taking necessary actions to provide for the safety of the child(ren), ensuring the child(ren) have adequate supervision after the perpetrator is removed, and any other necessary actions.

**C. Arrests.**

1. **Crimes of Domestic Violence.** Where a law enforcement officer has probable cause to believe that a person has committed a crime of domestic violence, the officer may, without or with a warrant, arrest and charge the perpetrator with the appropriate crime.

**2. Violations of Protection Orders.** Where a law enforcement officer has probable cause to believe that the perpetrator violated a Protection Order, the officer may arrest the perpetrator.

**D. Seizing Weapons.** Law enforcement officers have the authority to seize weapons incident to arrest and in the course of securing a crime scene. The law enforcement officer shall:

**1.** Seize all weapons alleged to have been involved or threatened to be used in the commission of a crime or any weapon in the immediate vicinity of the alleged commission of the offense; and

**2.** Seize a weapon that is in plain view or that is located during a search authorized by a person entitled to consent to the search. All such weapons including those the officer concludes were used in the commission of a crime must be confiscated regardless of ownership.

## **SECTION X. DUTIES OF TRIBAL PROSECUTOR**

**A.** In every case in which a person is arrested for or charged with a criminal offense under this Statute, the Prosecutor's Office must maintain contact with the victim throughout the criminal proceedings.

**B.** The Prosecutor's Office must confer with the victim regarding the need for any civil protection orders, bonds and other restraints to assure the safety of the victim and the victim's family or household members.

**C.** The Prosecutor's Office must inform the victim of all hearing dates, continuances, and rights of the victim. The Prosecutor's Office shall make available to the victim all reports received by the Prosecutor at the conclusion of the case.

**D.** The Prosecutor's Office must inform the victim of major prosecutorial decisions; including decisions not file charges under this Statute when the victim has reported the offense or the perpetrator has been arrested for a criminal offense under this Statute, or decisions to enter into a plea agreement relating to a charge under this Statute.

**E.** The Prosecutor’s Office must obtain information from the victim regarding costs and losses sustained as a result of the perpetrator’s act of domestic violence and must seek restitution for the victim and provide opportunity to complete a victim’s impact statement that will be presented to the court.

**SECTION XI. SEVERABILITY**

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**SECTION XII. EFFECTIVE DATE**

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

**SECTION XIII. OTHER RELATED STATUTES**

See WOS 2009-009 Sex Offense, Crime and Criminal Code, Victim’s Rights Statute, Personal Protection Orders and No Contact Orders and Violations of Protective Orders, or as may be amended.

## CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on April 8, 2021 at which a quorum was present, by a vote of 8 in favor, 0 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Fred Harrington Jr.	X			
Fred Kiogima	X			
Tamara Kiogima	X			
Melissa Pamp	X			
Leroy Shomin	X			
Marty Van De Car	X			
Marcella R. Reyes				X
Julie Shananaquet	X			
Emily Proctor	X			

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 Emily Proctor, Legislative Leader

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 Julie Shananaquet, Tribal Council Secretary

Received by the Executive Office on \_\_\_\_\_ by \_\_\_\_\_

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 Regina Gasco Bentley, Tribal Chairperson

Received from the Executive on \_\_\_\_\_ by \_\_\_\_\_